EUGENE G. ROGUSZKA

IBLA 74-90 Decided February 28, 1974

Appeal from letter decision of the Alaska State Office, Bureau of Land Management, requiring appellant to pay appraised value of $4,000 for Small Tract A-044729.

Affirmed.

Small Tract Act: Classification

The filing of a request for reclassification of land under the Small Tract Act gives the requesting party no rights in the subject land, as no contractual agreement is formed as a result of such a request.

Small Tract Act: Generally

The mere filing of a small tract application does not create in the applicant any right or interest in the land, as the Secretary in his discretion may refuse to consummate a sale at any time prior to issuance of patent.

Administrative Practice--Federal Employees and Officers: Authority to Bind Government--Small Tract Act: Generally

An applicant for land under the Small Tract Act cannot acquire any right in the land by virtue of administrative delay.

Appraisals--Small Tract Act: Appraisals

Departmental regulation 43 CFR 2731.5(a) states that whenever lands are classified for direct sale under the Small Tract Act, they will be sold at no less than their appraised fair market value determined at the time and place, and in the manner specified by the classification order.

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The regulation requires that the Government receive full value for the land computed at the time of or just prior to the action whereby sale commitment is made. To permit the consummation of a sale upon the basis of values which were determined years before the date of the sale and which do not reflect the true current fair market value of the public land would be contrary to the public interest.

Appraisals--Small Tract Act: Appraisals

When an applicant for a small tract has refused to accept the land on the terms offered by the Government and has thus not committed himself to any purchase, no contractual agreement exists and the Government may choose to reappraise the land should circumstances indicate that a change in value has occurred since it made its offer to sell.

Appraisals--Small Tract Act: Appraisals

Where the current fair market value of land has been determined in accordance with accepted appraisal procedures, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error.

Rules of Practice: Appeals: Statement of Reasons

An appellant may not reserve for some later time the right to argue one of the issues he has raised on appeal. Having neither alleged facts nor presented evidence that afforded a basis for determining whether the Bureau of Land Management had erred on a particular issue, appellant cannot cure this defect in the appeal by the presentation of such evidence in a subsequent appeal, as appeals to this Board cannot be made in a piecemeal fashion.

APPEARANCES: Eugene G. Roguszka, pro se.

OPINION BY MR. RITVO

Eugene G. Roguszka has appealed from a decision, dated August 10, 1973, of the Alaska State Office, Bureau of Land Management, requiring him to submit $4,000 as the purchase price for lot 8, U. S. Survey No. 4873, Alaska, located in T. 22 N., R. 5 W., S.M., which had been classified for direct sale to him under the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. §§ 682a-682e (1970), at an appraised fair market value of $4,000. Appellant maintains that the $4,000 appraised valuation is incorrect.

The history of this case goes back a number of years. On August 5, 1958, appellant filed an application for lot 8 as a small tract recreation site. The tract is on the southwesterly shore of Trapper Lake which lies west of the Susitna River, approximately 60 air miles north of Anchorage.

On May 19, 1959, certain tracts of land surrounding Trapper Lake, including the tract applied for by appellant, were classified under Small Tract Classification Order No. 307-NC as suitable for lease and sale under the Small Tract Act. On April 28, 1960, this order was amended insofar as it pertained to appellant's application. The amendment specified that the land in appellant's application was suitable and reclassified for lease and lease only. The reason for this amendment was that appellant had previously patented a small tract for homesite purposes and could not acquire another small tract under the Department's anti-speculation policy which required that no applicant could obtain title to more than one small tract and that all pending applications for lease and purchase of a second small tract had to be denied or processed for lease only. Accordingly, in a letter decision dated April 29, 1960, the land office offered appellant a lease for a period of ten years with right of renewal.

Appellant requested a waiver of the anti-speculation policy. The request was denied in a letter decision dated July 18, 1960. The decision pointed out that Roguszka's equities in the tract would be protected adequately by a small tract lease, and informed appellant that should a modification of the Secretary's anti-speculation policy be allowed in the future, appellant would be so informed.

Appellant accepted the lease but appealed the decision denying waiver. On March 31, 1961, an Appeals Officer, Bureau of Land Management, affirmed the decision offering appellant a lease only. Appellant further appealed to the Secretary who affirmed the decision of the Appeals Officer. Eugene G. Roguszka, A-28853 (March 12, 1963). The Secretary cited the fact that a lease was sufficient to meet appellant's need for recreational land, particularly in view of

the fact that the record indicated that appellant's wife had been offered a lease with option to buy the adjoining tract of 3.90 acres. 1/

On October 14, 1965, the Bureau's Alaska State Office informed appellant in a letter that the anti-speculation policy of the Secretary was no longer in effect and that appellant could request that the classification order be amended to permit direct sale. On October 25, 1965, appellant mailed in a lease payment on the subject land and requested amendment of the classification order. Not having heard from the State Office, appellant wrote a letter on June 2, 1966, inquiring whether his request for reclassification had been properly filed. On June 16, 1966, the State Office responded in a letter informing appellant that his request for amendment of classification had been noted and was being processed, and that appellant would be notified when the amended classification order was received.

From the record it appears that a rough pencil draft of the start of an appraisal report for small tract A-044729 was begun in 1967 with additional appraisal data collected in late 1969 or early 1970. No official report regarding appraisal or improvements was completed at that time. On April 16, 1971, the State Reviewing Appraiser submitted a memorandum regarding small tract A-044729, stating that the Bureau of Land Management no longer had resource management responsibilities in the area of the subject tract and that maintaining the tract in federal ownership under a long-term lease would not provide any benefits to the general public. The memorandum recommended direct sale. Following this recommendation, on September 2, 1971, the Anchorage District Office amended classification order No. 307-NC, by reclassifying lot 8 for direct sale to Roguszka under the Small Tract Act. The reclassification order stated that direct sale would be made at the current fair market value to be determined by appraisal.

On September 25, 1972, an appraisal report was submitted to the Anchorage District Office setting the fair market value of lot 8 as of August 17, 1972, at $4,000. The appraisal was approved on December 1, 1972. On February 26, 1973, appellant was notified by letter of the reclassification and $4,000 appraisal approval in advance of an anticipated June decision requiring payment so that appellant would have ample time to submit the monies within the mandatory 60-day limit required by Departmental regulation 43 CFR 2913.3(c).

1/ The land office records reveal that Delores R. Roguszka obtained patent under the Small Tract Act to lot 7, U.S. Survey 4738, on December 16, 1961.

Appellant complained to the District Office that the appraisal method was improper and the valuation incorrect. In response to this complaint, the District Office informed appellant by letter on March 30, 1973, that it would recheck the appraisal. The State Office further informed appellant that an applicant for purchase of a small tract of public land could acquire no rights in the land by the filing of an application, nor could he acquire any rights because of delay in processing; if the applicant desired to purchase the land, he must consent to the terms on which the land is offered and must pay a purchase price which reflects the current appraisal of the land.

On June 20, 1973, the District Office notified appellant by letter that it had been informed by its chief appraiser that a proper method was used in compiling comparable sales data for the appraisal of appellant's small tract and that the $4,000 appraisal value was correct.

Thereafter, on July 18, 1973, Eugene G. Roguszka filed an application to purchase Small Tract A-044729. As noted above, by decision dated August 10, 1973, the Alaska State Office, Bureau of Land Management, allowed appellant 60 days from receipt of the decision within which to submit the purchase price, and appellant appealed from that part of the decision requiring him to pay an appraised value of $4,000 for the small tract.

Upon receipt of Roguszka's appeal, the Chairman, Board of Land Appeals, requested that the Director, Bureau of Land Management, review the appraisal for compliance with BLM and Departmental procedures and for its accuracy. On January 2, 1974, the Board received a memorandum from the Bureau of Land Management stating that the original appraisal had been reviewed and the established price of $4,000 was representative of fair market value. Following this long chain of events, the Board now has this appeal before it.

In his statement of reasons on appeal, appellant essentially argues that: (1) a commitment for direct sale was made by the Bureau of Land Management in its letter of October 14, 1965, and therefore, the "current" fair market value should have been an October 1965 value, rather than a 1972 value; (2) the increased valuation resulting from unreasonable administrative delay in appraising the subject property should not be borne by the appellant; (3) the decision in 1965 that a reappraisal was necessary was incorrect as the Bureau had appraisal data in hand at that time; and (4) assuming that current fair market value was to be determined in 1972, the $4,000 figure was incorrect as neither the cash terms of the purchase nor correct market data were used in determining the appraisal.

In addition to the above arguments, appellant states that he is reserving the right to argue at a later time that if a current

appraisal date is required, such date should be September 2, 1971, the date on which the subject small tract was reclassified for sale.

With regard to appeal point number one, appellant quotes from the October 14, 1965, letter as follows:

> The Secretary's anti-speculation policy is no longer in effect. Therefore, if you are still interested in purchasing the tract, you may now request that the classification order be amended to permit direct sale. (Emphasis by appellant.) 2/

Appellant interprets these remarks as indicating an immediate commitment for sale of the subject land which was accepted when he requested that the classification order be amended. We cannot agree with this interpretation.

The act under which appellant requested reclassification in order to purchase the subject land is the Small Tract Act of June 1, 1938, as amended by the Act of June 8, 1954, 68 Stat. 239, 43 U.S.C. §§ 682a-682e (1970). The Act provides:

> * * * the Secretary may classify [public land] as chiefly valuable for residence, recreation, business or community site purposes * * * in reasonably compact form and under such rules and regulations as he may prescribe, at a price to be determined by him, for such use * * *. (Emphasis added.)

The statute demonstrates that reclassification of land is wholly discretionary with the Secretary. Appellant's letter filed in the District Office was nothing more than a request for a reclassification. The filing of such a request after notification that a reclassification might be possible gave the appellant no rights in the subject land as no contractual agreement was formed. Charles Leonard Short, A-28994 (September 21, 1962). The only right appellant acquired was the right to have his request for reclassification considered. Furthermore, appellant's filing of an application following the reclassification order did not vest in him any rights or interests in the subject land, as the Secretary in his discretion may refuse to consummate a sale at any time prior to issuance of patent. See Estate of Lyle K. Gross, 77 I.D. 174, 176 (1970), and cases cited therein.

Appellant's second contention is that the Bureau abused its authority in failing to reappraise the subject land within a

2/ Appellant's Statement of Reasons for Appeal at 3.

reasonable time. Again, appellant quotes from the October 14, 1965, letter:

> * * * Upon receipt of such a request, a reappraisal to reflect the current fair market value would have to be made * * *. (Emphasis by appellant.) 3/

Appellant then goes on to state:

> The applicant expected, and reasonably so, that the reappraisal would be made immediately.
>
> Nothing prevented the Bureau from making the reappraisal immediately. 4/

Appellant's alleged expectation of an immediate reappraisal was not as reasonable as he maintains. Appellant fails to quote further from the October 14, 1965, letter which also states immediately following the above-quoted line from the letter:

> You would then be given the opportunity to purchase at the current market value of the land as of the date the appraisal is made. A reappraisal would take considerable time because of the heavy work load now before this office. (Emphasis added.)

Delay was reasonably expected by appellant as further demonstrated by his letter of June 2, 1966, which cited concern for the propriety of his reclassification request:

> Your letter suggested that I make a "request that the classification order be amended to permit direct sale." You further stated that a heavy workload would result in considerable time involved, etc. This I understand. (Emphasis added.)

As for appellant's allegation that nothing prevented the Bureau from making an immediate appraisal, the record indicates that the Alaska State Office had a considerable backlog of work during the relevant period of this case and the staff was insufficient to handle the heavy burden. Memoranda within the record indicate that additional assistance was requested from Washington for personnel to handle the large workload faced by the Alaska Office. Appellant's was one of the cases cited in the backlog of work used to justify the request for additional assistance. Furthermore, memoranda

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3/ Id.
4/ Id.

within the record indicate that some field appraisal work had to be delayed due to adverse weather conditions.

It is regrettable that substantial administrative workloads often result in burdensome delays. However, an applicant for public land cannot acquire any right in the land by virtue of administrative delay. Charles Schraier, A- 30814 (November 21, 1967), aff'd, Schraier v. Udall, 419 F.2d 663, 667-68 (D.C. Cir. 1969); Joseph J. Miller, A-30681 (May 3, 1967); Jack T. Lofstrom, A-30699 (March 23, 1967); Cecil W. Hinshaw, A-30006 (July 23, 1964); Leotha Marie Stone, A-29470 (November 15, 1964); Elizabeth Sauer Dreves, A-29292 (July 23, 1963); Kenneth W. Swallow, A-28975, 28976 (August 6, 1962); Richard K. Todd, 68 I.D. 291, 297 (1961), aff'd sub nom. Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966).

With regard to appeal point number three, appellant asserts that the Bureau incorrectly chose to reappraise the subject property rather than rely upon existing 1965 data. This choice was not only proper, but compelled by Departmental regulation and policy.

The anti-speculation policy announced by former Secretary Seaton in February 1960, was subsequently superseded by the Department's conservation policy:

> The policy, as it relates to public sales, is that the Government must receive a full return for its property, that no party to a transaction with the Government should receive a windfall, and that to the extent the law permits and in the absence of a binding contract, no transaction will be consummated where, in the course of processing, evidence develops that the Government will not receive full value.

Autrice C. Copeland, 69 I.D. 1, 2 (1962), aff'd sub nom. Ferry v. Udall, 336 F.2d 706, 711 (9th Cir. 1964).

This policy is embodied in a Departmental regulation pertaining to small tracts which states in pertinent part:

> Whenever lands are classified for direct sale * * * they will be sold at no less than their appraised fair market value at the time and place and in the manner specified by the classification order * * *. (Emphasis added.)

43 CFR 2731.5(a).

According to the directive establishing the policy, positive and convincing evidence must exist that the Government will receive full value at the time or just prior to the action whereby commitment would be made. Henry Offe, A-29060 (December 10, 1962); Kenneth W. Swallow, supra. Thus, it would be contrary to the Government's conservation policy to permit the consummation of a sale upon the basis of values which were determined years before the date of the sale and which do not reflect the true "current" fair market value of the subject land.

We conclude that the Bureau's decision to use the September 1972 appraisal report as a basis for its 1973 offer to sell was correct. We note further that appellant, to date, has refused to accept the land on the conditions offered by the District Office, and has thus not committed himself to any purchase. Accordingly, as no contractual agreement exists between the parties, the Government may choose to reappraise the subject land should circumstances indicate that a change in value has occurred since it made its offer to sell. Perley M. Lewis, A-28707 (December 30, 1963), aff'd Lewis v. Udall, 374 F.2d 180 (9th Cir. 1967); Autrice C. Copeland, supra; Henry Offe, supra.

As for appellant's final argument, namely, that the Bureau incorrectly appraised the value of the subject land as of 1972, we do not agree.

On August 23, 1972, an auction was held at Talkeetna, Alaska, at which 31 tracts were sold on Trapper Lake by the Alaska Division of Lands. The Bureau used market data information from these sales in appraising A-044729, as they offered the best and most direct evidence of the current market value of the subject land. Four of the transactions involving lots in close proximity to the subject land and a fifth sale about the same size and shape as the subject land just across the lake were examined and related to the subject property. The sale prices ranged from a low of $3,400 to a high of $6,800.

Appellant initially objects to the use of these sales as the State does not require cash purchases. The State of Alaska sets terms of 10 percent down and the balance in equal annual payments of 10 percent plus interest on the unpaid balance at 6 percent. The Bureau, on the other hand, requires cash in 60 days for the full purchase price. Appellant requested an adjustment downward based on the difference in financing.

No adjustment is required in this case. Appellant was informed by letter of June 20, 1973, that the appraiser did consider the terms of payment for the sales in estimating the market value of

the subject tract. A number of the State sales were cash sales. Furthermore, in the January 2, 1974, appraisal review submitted to this Board, the following is stated:

> Prices established at public auction sales in the State of Alaska include cash sales--Our appraiser checked with the State and ascertained that there is no discount for cash; therefore, an adjustment for financial terms of sale between the Federal sale terms and the State sale terms, is not in order.

Appellant's last objection relates to the market analysis appraisal method used by the Government. Appellant argues that it would have been preferable to use the State of Alaska's "Open to Entry" land program approach in setting an appraisal value on the small tract, or in the alternative, valuation should have been based on the average cost per acre of past sales. There is no merit to these arguments. First of all, the State did not dispose of its Trapper Lake lands at the values set out in the "Open to Entry" program. The program is used simply as a rough guide for entries made before lands are surveyed. As for appellant's latter argument, the subject land is waterfront property, and the appraisal reports indicate that the most valid valuation guide in such instances is the average cost per front foot of waterfrontage per acre, not average cost per acre.

The appraisal review states that the lot most comparable to lot 8 sold at $42 per front foot of waterfrontage per acre, a price which would yield at value of $4,578 for lot 8. 5/

5/ The pertinent portion of the appraisal review reads:

Appraisal Review

"The fair market value of $4,000 appraised as of August 17, 1972, is strongly supported by the sales data included in the report. A statistical analysis of six sales in the immediate vicinity follows:

Sale	Size	Lake Frontage	Sale Price	Price Per Acre	Relative Location	Price Per F.F.	F.F. Per Acre	Price Per Acre
43	4.7 ac.	240'	$3,400	$723.	600'NW	$14.17	51	$66.
44	4 ac.	300	3,850	962.50	300'NW	12.83	75	51.33
45	2.86ac.	600'+ 300' E	6,800	2377.	approx.	11.33	210.	32.38
46	7.79ac.	400'	6,500	834.40	abuts subj. on S.	16.25	51.	127.45
65	3.01ac.	300+	4,200	395.34	cove on opp. side lake 3/4 mi. E.	14.00	100.	42

Appellant has not asserted that the Government's appraisal report failed to follow Bureau of Land Management standards. We have examined the appraisal report and find it to be in conformity with Bureau standards. Where the current fair market value of land has been determined in accordance with accepted appraisal procedures, the appraisal will not be disturbed in the absence of positive, substantial evidence that it is in error. Nick Lambros, 10 IBLA 135, 136 (1973); Nils Langenborg, A-30011 (August 4, 1964); Daniel Hicken, A-27877 (March 5, 1959); Homer Demangate, Nevada 053766 (July 24, 1964). Appellant has not submitted such evidence. Accordingly, no modification of the Bureau's appraisal will be made.

Finally, we cannot accept appellant's attempt to reserve for some later time the right to argue the issue of whether an appraisal should have been made as of September 2, 1971, the date on which the subject land was reclassified for sale. Appellant neither alleged facts nor presented evidence that afforded a basis for determining whether the Bureau had erred on this point. This defect in the appeal cannot be cured by the presen-tation of such evidence in a subsequent appeal, as appeals to this Board cannot be made in a piecemeal fashion. Maria Fischer, A-30304 (June 7, 1965); Duncan W. Cleaves, A-29354 (May 6, 1963).

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fn. 5 (cont.)

62	4.17ac.	330+	4,650	1115.	opp. side	14.09	79 lake	58.86	
Subject									
	2.9 ac.	316				108.96			

Sale #65 is the most comparable to subject in size, lake frontage and ratio of lack frontage to size. This sale indicates the following value range for subject:

2.9 ac. at $1,395 per ac. = $4,045
316 front ft. lake frontage at $14. = $4,424
108.96 fr. ft. per acre at $42. = $4,578

Typically, the most valid approach on waterfront property is the cost per front foot of water frontage per acre. Ruling out sale #46 (the top of the range) as not representative of market value since the buyer, Roguszka, needed his property to expand his holdings, the range is $32.38 to $66 per front foot per acre. Sale #43 has 20% less frontage and approximately 50% more acreage. Sale #44 has similar frontage, but is 33% larger. Sale #45, representing the low end of the range, has approximately the same size, but 100% more frontage. Sale #62 has comparable frontage, but is 33% larger. Sale #65 is comparable both as to size and frontage, and the $42 per front foot per acre appears to be the best indicator of subject's value."

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Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo, Member

We concur:

Joseph W. Goss, Member

Joan B. Thompson, Member